

March 2, 2007

DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Application for Exception

Name of Case: A & M Oil Company, L.L.C.

Date of Filing: January 23, 2007

Case No.: TEE-0041

On January 23, 2007, A & M Oil Company, L.L.C. (A & M) filed an Application for Exception with the Office of Hearings and Appeals (OHA) of the Department of Energy (DOE). The firm requests that it be permanently relieved of the requirement to prepare and file the Energy Information Administration (EIA) Form EIA-782B, entitled "Resellers'/Retailers' Monthly Petroleum Product Sales Report." As explained below, we have determined that the firm's request should be denied.

I. Background

The DOE's Energy Information Administration (EIA) is authorized to collect, analyze, and disseminate energy data and other information.¹ The EIA-782B reporting requirement grew out of the shortages of crude oil and petroleum products during the 1970s. In 1979, Congress determined that the lack of reliable information concerning the supply, demand and prices of petroleum products impeded the nation's ability to respond to the oil crisis. It therefore authorized the DOE to collect data on the supply and prices of petroleum products. This information is used to analyze trends within petroleum markets. Summaries of the information and the analyses are reported by EIA in publications such as "Petroleum Marketing Monthly." This information is used by Congress and state governments to project trends and to formulate national and state energy policies. Access to this data is vital to the nation's ability to anticipate and respond to potential energy shortages.²

Form EIA-782B is a monthly report, pursuant to which resellers and retailers report the volume and price of sales of motor gasoline, No.

¹ 15 U.S.C. § 772(b); 42 U.S.C. § 7135(b).

² See H.R. Rep. NO. 373, 96th Con., 1st Sess., reprinted in 1979 U.S. Code Cong. & Admin. News 1764, 1781 (H.R. Report 373).

2 distillates, propane, and residual fuel oil. In order to minimize the reporting burden, the EIA periodically selects a relatively small sample of companies to file Form EIA-782B³ and permits reporting firms to rely on reasonable estimates.⁴

II. Exception Criteria

OHA has the authority to grant exception relief where the reporting requirement causes a "serious hardship, gross inequity or unfair distribution of burdens."⁵ Since all reporting firms are burdened to some extent by reporting requirements, exception relief is appropriate only where a firm can demonstrate that it is adversely affected by the reporting requirement in a way that differs significantly from similar reporting firms.

When considering a request for exception relief, we must weigh the firm's difficulty in complying with the reporting requirement against the nation's need for reliable energy data. Thus, mere inconvenience does not constitute a hardship warranting relief.⁶ Similarly, the fact that a firm is relatively small or has filed reports for a number of years does not constitute a hardship warranting relief.⁷ If firms of all sizes, both large and small, are not included in the survey, the estimates and projections generated by EIA's statistical sample will be unreliable.⁸

OHA has granted relief from the reporting requirement under various circumstances. For example, we have granted relief where: the firm's financial situation is so precarious that the additional burden of meeting the DOE reporting requirements threatens the firm's continued viability;⁹ the firm's only employee capable of preparing the report is ill and the firm cannot afford to hire outside help;¹⁰ extreme or

³ Firms that account for over five percent of the sales of any particular product in a state or do business in four or more states, designated as certainty firms, are always included in the sample of firms required to file the form. A random sample of other firms is also selected. This random sample changes approximately every 24 to 30 months, but a firm may be reselected for subsequent samples. A firm that has been included in three consecutive random samples will generally not be included in a fourth consecutive sample, but may be included in a later sample.

⁴ Form EIA-782B requires that the firm make a good faith effort to provide reasonably accurate information that is consistent with the accounting records maintained by the firm. The firm must alert the EIA if the estimates are later found to be materially different from actual data.

⁵ 42 U.S.C. § 7194; 10 C.F.R. § 1003.25(b)(2).

⁶ *Glenn Wagoner Oil Co.*, 16 DOE ¶ 81,024 (1987).

⁷ *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990).

⁸ *Id.*

⁹ *Mico Oil Co.*, 23 DOE ¶ 81,105 (1994) (firm lost one million dollars over previous three years); *Deaton Oil Co.*, 16 DOE ¶ 81,206 (1987) (firm in bankruptcy).

¹⁰ *S&S Oil & Propane Co.*, 21 DOE ¶ 81,006 (1991) (owner being treated for cancer); *Midstream Fuel Serv.*, 24 DOE ¶ 81,203 (1994) (three month extension of time to file reports granted when two office employees simultaneously on maternity leave); *Eastern Petroleum Corp.*, 14 DOE ¶ 81,011 (1986) (two month extension granted when computer operator broke wrist).

unusual circumstances disrupt a firm's activities;¹¹ or, a combination of factors resulting from unavoidable circumstances makes completing the form impracticable.¹²

III. The Application for Exception

A & M filed its Application for Exception in January 2007.¹³ After reviewing the Application, we determined that there was insufficient information to permit us to act favorably upon the request. We contacted A & M in order to gather more information pertaining to the request.¹⁴

A & M is a seller of petroleum products based in Tuscaloosa, Alabama. The current reporting sample for filing Form EIA-782B began in August 2004.¹⁵ That is the first sample in which A & M has been included.¹⁶ A & M states that it has reduced its staff as a result of difficulties in its retail market.¹⁷ According to A & M, the firm currently has two administrative workers, in addition to the firm's manager. A & M maintains that, currently, the manager completes the form manually and that it takes him approximately three to four hours.¹⁸ A & M states that the requirement to complete and file the form has become burdensome to the firm. A & M requests that it be permanently relieved of the obligation to file form EIA-782B.

IV. Analysis

The Form EIA-782B reporting requirement is not particularly burdensome. It requires little more than the essential type of pricing, supply, and inventory data that is required to operate a business. The EIA estimates that it should normally take a firm approximately two and one-half hours per month to complete the form.¹⁹ As mentioned above, the burden of the requirement can be substantially reduced by the use of estimates.²⁰

¹¹ *Little River Village Campground, Inc.*, 24 DOE ¶ 81,033 (1994) (five months relief because of flood); *Utilities Bd. of Citronelle-Gas*, 4 DOE ¶ 81,025 (1979) (hurricane); *Meier Oil Serv.* 14 DOE ¶ 81,004 (1986) (three month extension granted where disruptions caused by installation of new computer system left the firm's records inaccessible).

¹² *Ward Oil Co.*, 24 DOE ¶ 81,002 (1994) (ten month extension granted where long illness and death of a partner resulted in personnel shortages, financial difficulties and other administrative problems).

¹³ See Letter from David W. Cusimano, A & M, to OHA (dated January 12, 2007) (Application for Exception).

¹⁴ See Memorandum of Telephone Conversation between David W. Cusimano, A & M, and Diane DeMoura, OHA (February 5, 2007).

¹⁵ Electronic Mail Message from Tammy Heppner, EIA, to Diane DeMoura, OHA (January 24, 2007).

¹⁶ *Id.*

¹⁷ See Application for Exception; Memorandum of Telephone Conversation between David W. Cusimano, A & M, and Diane DeMoura, OHA (February 5, 2007).

¹⁸ *Id.*

¹⁹ See Section 10 of General Instructions to Form EIA-782B.

²⁰ See Section 7 of the General Instructions for Form EIA-782B.

A & M's arguments - that the firm is small and has a limited staff, and that it takes the firm's manager three to four hours to manually complete the form - do not indicate that the firm is experiencing a burden significantly greater than that experienced by other reporting firms. The relatively small size of a firm and its staff does not justify relief.²¹ Furthermore, despite A & M's contention that the form requires an inordinate amount of time each month to complete, the time the firm's manager takes to complete the form is not significantly greater than the general EIA estimate. In addition, it may be possible for the firm to reduce the time spent to complete the form through the use of estimates.

As the foregoing indicates, A & M has not demonstrated that it meets the standards for exception relief. Accordingly, we have determined that the exception request should be denied.

It Is Therefore Ordered That:

- (1) The Application for Exception filed by A & M Oil Company, L.L.C., Case No., TEE-0041, be, and hereby is, denied.
- (2) Administrative review of this Decision and Order may be sought by any persons aggrieved or adversely affected by the denial of exception relief. Such review shall be commenced by filing a petition for review with the Federal Energy Regulatory Commission within 30 days of the date of this Decision and Order pursuant to 18 C.F.R. Part 385, Subpart J.

Fred L. Brown
Acting Director
Office of Hearings and Appeals

Date: March 2, 2007

²¹ See *Mulgrew Oil Co.*, 20 DOE ¶ 81,009 (1990) (providing that if firms of all sizes, both large and small, are not included in EIA's statistical sample, the estimates and projections generated by the sample will be unreliable).